

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Application of	)	DOCKET TG-120033
	)	
WASTE MANAGEMENT OF	)	
WASHINGTON, INC. d/b/a WM	)	ORDER 06
HEALTHCARE SOLUTIONS OF	)	
WASHINGTON	)	
	)	ORDER DENYING MOTION FOR
For an Extension of Certificate G-237	)	LEAVE TO TAKE DEPOSITION
for a Certificate of Public Convenience	)	AND TO COMPEL RESPONSES
and Necessity to Operate Motor	)	TO DEPOSITION QUESTIONS
Vehicles in Furnishing Solid Waste	)	
Collection Service	)	
.....	)	

**BACKGROUND**

- 1 On December 30, 2011, Waste Management of Washington, Inc. (Waste Management or Company), filed with the Washington Utilities and Transportation Commission (Commission) an application for an extension of authority under Certificate G-237, standing in the name of Waste Management of Washington, Inc., d/b/a WM Healthcare Solutions of Washington (Waste Management), for authority to provide solid waste collection service consisting of bio-hazardous waste in the state of Washington. Stericycle of Washington, Inc. (Stericycle) and other parties filed protests against Waste Management’s application.
  
- 2 The Commission authorized and established limitations on discovery in Order 01, Prehearing Conference Order (Order 01) entered on April 16, 2012. On May 14, 2012, the Commission entered Order 02 overruling objections to the discovery limitations in Order 01 and denying interlocutory review. The Commission twice conducted hearings on subsequent motions brought by Stericycle to compel discovery and/or to expand the scope or means of discovery. The Commission largely denied those motions.
  
- 3 On October 24, 2012, Stericycle filed a Motion for Leave to Take Deposition and to Compel Responses to Deposition Questions from two Waste Management employees who filed declarations in support of the Company’s financial and operational fitness

(Motion). Stericycle contends that both of these witnesses possess information significant to Stericycle's defense in this proceeding and that Waste Management has refused to agree to make one witness available for deposition or to permit the other witness to respond to certain lines of questioning in a deposition the parties agreed to conduct.

- 4 On October 31, 2012, Waste Management filed an Opposition to the Motion (Opposition). Waste Management claims that the information Stericycle seeks from the specified witnesses is beyond the scope of the discovery limitations the Commission previously established in this docket.

### DISCUSSION AND DECISION

- 5 The Commission limited discovery by all parties in this docket to issues that directly impact the party conducting discovery. "Specifically, the protesting parties do not have a significant interest in, and may not conduct discovery on, issues related to Waste Management's financial or operational fitness to provide service under the extended authority for which it has applied."<sup>1</sup> The Commission further required parties to seek leave of the presiding officer prior to taking depositions in recognition of the fact that depositions are infrequently authorized in Commission adjudicative proceedings and generally are reserved for circumstances in which that form of discovery is the most efficient and least burdensome means of obtaining relevant information.<sup>2</sup>
- 6 The Motion fails to demonstrate that Stericycle's purpose in seeking to depose the specified Waste Management witnesses is to obtain relevant information within the scope of the discovery limitations the Commission has established. Waste Management represents that its witness Jeff Daub "submitted testimony *only* in the form of a declaration regarding Waste Management's fitness,"<sup>3</sup> and "[n]either Mr. Daub nor Waste Management contends that *anything* in his declaration should be taken as *any* evidence regarding the competitive service issues which the Presiding Officer directed should be offered through separate direct testimony."<sup>4</sup>

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<sup>1</sup> Order 01 ¶ 8.

<sup>2</sup> *Id.*

<sup>3</sup> Opposition ¶ 12 (emphasis in original).

<sup>4</sup> *Id.* ¶ 18 (emphasis in original).

- 7 The Commission accepts Waste Managements' representations and will limit consideration of Mr. Daub's testimony accordingly. The Commission also agrees with Waste Management that to the extent Stericycle also seeks information from Mr. Daub about generators who submitted prefiled testimony, that information is more appropriately requested from the witnesses representing those generators. The Commission thus finds that Stericycle's request to depose Mr. Daub is outside the scope of permissible discovery and should be denied.
- 8 Jeff Norton, the other Waste Management witness specified in the Motion, submitted both prefiled testimony on issues related to competitive entry and a declaration on the Company's fitness.<sup>5</sup> Waste Management voluntarily made Mr. Norton available for deposition with respect to the competitive issues but at that deposition objected and refused to permit him to respond to questions the Company considered to be outside the scope of his prefiled testimony. The subject matter of that questioning included (1) whether Waste Management formerly employed an account manager for medical waste customer service issues; (2) the specifics of the Company's waste processing protocol; (3) a flat-fee, bundled service contract with a Washington generator; and (4) evidence of discounts offered to generators to induce them to switch to Waste Management for biomedical waste services.
- 9 As an initial matter, Stericycle is not entitled to compel responses to questions posed in a deposition that the Commission did not authorize. The Commission, however, will construe this aspect of the Motion as a request to authorize a deposition of Mr. Norton to inquire into the subject matter identified in the Motion.
- 10 Even as properly construed, the Commission will deny the Motion. The Commission agrees with Waste Management that Waste Management's past employment practices and waste processing protocol are issues of fitness outside the scope of permissible discovery that protestants may conduct. Discovery into whether Waste Management is complying with its legal and regulatory obligations also is outside the bounds of Stericycle's legitimate interest in this docket. The Commission previously refused to allow Stericycle to engage in such discovery and continues to adhere to that position. As suggested in that prior ruling, Stericycle has filed a complaint against Waste Management alleging the same or similar conduct into which Stericycle seeks to inquire here,<sup>6</sup> and that docket is the appropriate proceeding to address those issues.

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<sup>5</sup> *Id.* ¶¶ 10-11.

<sup>6</sup> *Stericycle v. Waste Management*, Docket TG-121597.

**ORDER**

11 THE COMMISSION ORDERS that Stericycle of Washington, Inc.'s Motion for Leave to Take Deposition and to Compel Responses to Deposition Questions is DENIED.

Dated at Olympia, Washington, and effective November 5, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GREGORY J. KOPTA  
Administrative Law Judge